IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 23088 of 1996

Between:

B.Sudhira Rao S/o.Pedda Anjaiah
R/o.Koduru X Road Mudinepalle
Krishna Dist.

..... PETITIONER

AND

1 The Depot Manager APSRTC Bus Depot
Gudivada Krishna Dist.
2 The Labour Court, Guntur Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue Writ, order or direction more particularly one in the nature of writ of Certiorari calling for the records relating to the award dated 1-12-1988 in I.D.No.357/87 on the file of the 2nd respondent and quash the same as illegal and unjust in so far as it is against the petitioner and in consequence direct the 1st respondent to pay the back wages and allow the continuity of service with all attendant benefits and pass such other order or orders.

Counsel for the Petitioner: MR.V.V.SARMA

Counsel for the Respondent No.1 & 2: MR.VENKATESWARLU POSANI

The Court made the following :

ORDER:

A Conductor of the APSRTC challenges the Award of the Labour Court, Guntur dated 1-12-1988 passed in I.D.No.357 of 1987. The writ petition itself is filed eight years after the cause of action occurred.

Be that as it may. The petitioner, while working as a Conductor on 11-8-1985 was alleged to have committed misconduct intentionally and with a fraudulent motive. It is alleged that the petitioner tampered with the ticket numbers and the SR and as a result caused revenue loss to the Department to an extent of Rs.60/-. The petitioner was issued with a charge memo listing out four charges. Pursuant to a departmental enquiry, by the order dated 20-12-1986 the disciplinary authority imposed the punishment of removal from service. The petitioner unsuccessfully carried the matter in a departmental appeal. Ultimately, he raised an industrial dispute before the Labour Court under Section 2 (A) (2) of the Industrial Disputes Act, 1947 (for short, 'the Act').

The Labour Court by the Award impugned herein, found no infirmity with the departmental proceedings and has also confirmed the conclusions in the domestic inquiry that the petitioner was guilty as charged. Despite having concurred with the conclusions as to the guilt of the petitioner in the departmental enquiry and that the petitioner was rightly awarded the major punishment, the Labour Court curiously recorded that as it was a first offence of the petitioner, and the amount involved was only

Rs.60/-, compassionate view could be taken and the punishment of removal of service imposed by the employer should be modified. The Labour Court recorded that the punishment of removal was disproportionate to the gravity of the misconduct. Accordingly, the Tribunal directed the respondent to appoint the petitioner afresh as

a Conductor without any entitlement to back wages or continuity of service.

It is urged by the learned counsel for the petitioner that as a consequence of the Award of the Labour Court, the petitioner has lost both continuity and seniority in service as well as back wages for a period of 14 years ie.., from 22-12-1986 to the date of implementation of the Award. Pursuant to the award, the petitioner was reinstated in to service.

The writ petition requires to be rejected for a plurality of reasons (a) It is instituted with considerable delay and laches which are not explained (b) the petitioner accepted the award and entered into service without demurral, as a fresh candidate. (c) The misconduct found in the departmental inquiry and confirmed by the Labour Court is one of misappropriation and fraudulent dealing with the amounts of the employer Corporation. Such misconduct is a grievous misconduct and requires condign punishment. Nevertheless on an erroneous application of principles, the Labour Court was pleased to set aside the order of the disciplinary authority imposing the punishment of removal from service and directed the reinstatement as a fresh candidate.

The respondent-employer does not appear to have challenged the award. There is no warrant for the conclusion that the Award is vitiated by a factor of disproportionate penalty having been substituted for the extreme penalty of removal of service. There is no cause for interference.

There are no merits in the writ petition and it is accordingly dismissed. No costs.

12-08-2004

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To

1 The Depot Manager APSRTC Bus Depot
Gudivada Krishna Dist.
2 The Labour Court, Guntur Dist.

3. Two CD copies.